



sitting in his employing establishment vehicle. He alleged that he was thrown forward and experienced pain in his lower back and neck. Appellant did not stop work.

By letter dated December 5, 2005, the Office informed appellant of the evidence needed to support his claim and requested that he submit such evidence within 30 days.

In a December 14, 2005 statement, appellant described his injury, noting that at the time of the accident, he had minor discomfort. Appellant alleged that he exited the vehicle to check for damage, exchanged information with the other driver, contacted his supervisor to inform him of what had transpired and completed the traumatic injury claim form. He began to experience symptoms of back pain during September and October 2005, while assigned surveillance on a specific case, which required numerous hours of sitting in his vehicle. Appellant stated that his physician recommended a magnetic resonance imaging (MRI) scan and referred him to a spinal specialist for cortisone injections and physical therapy. He denied any preexisting symptoms.

In a report dated December 12, 2005, Dr. Joseph Dryer, a Board-certified orthopedic surgeon, noted that appellant had chronic low back pain that worsened over the prior three months. He explained that appellant's work required sitting in his car for six to eight hours a day and had worsened his situation. Dr. Dryer determined that appellant had low back pain from a central protrusion at L5-S1 as well as degenerative disc disease.

By decision dated March 8, 2006, the Office denied appellant's claim. The Office found that the evidence did not establish that the events occurred as alleged. The Office also found that the medical evidence did not address the history of how the injury occurred.

On March 24, 2006 appellant requested reconsideration. He explained that he was uncertain if his injury resulted from the March 14, 2005 car accident or if it resulted from the long hours of surveillance. Appellant alleged that his back condition was work related.

In a May 18, 2006 report, Dr. Dryer noted that appellant had a history of chronic low back pain since September 2005. He checked the box "yes" in response to whether appellant had a history of concurrent or preexisting degenerative disc disease and herniated disc. Dr. Dryer diagnosed degenerative disc disease and a herniated disc and opined that appellant was partially disabled from December 12, 2005 to February 1, 2006.

In a decision dated October 13, 2006, the Office modified its March 8, 2006 decision. The Office found that appellant had established the March 14, 2005 incident. However, the Office found that the medical evidence was insufficient to establish his claim.

On December 13, 2006 appellant requested reconsideration. He described the circumstances related to his injury and his course of medical treatment. Appellant also alleged that he was concerned that he had not filed the correct form and that had resulted in the denial of his claim. A December 8, 2005 MRI scan of the lumbar spine read by Dr. Jeffrey Tambor, Board-certified in internal medicine, revealed a small left foraminal/extrafoaminal disc herniation at the L2-3 level superimposed upon a diffuse disc bulge and a mild broad based central disc protrusion at the L5-S1 level. The Office also received several progress notes which appeared to be for treatment of low back pain; however, the notes were partially illegible and it is unclear whether they were signed by a physician. The Office also received November 5, 2005

diagnostic reports from Dr. Tambor that revealed evidence of mild bilateral polyneuropathy of the legs.

By decision dated March 14, 2007, the Office denied modification of the October 13, 2006 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act<sup>2</sup> and that an injury was sustained in the performance of duty.<sup>3</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>5</sup> The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *James E. Chadden Sr.*, 40 ECAB 312 (1988).

<sup>4</sup> *Delores C. Ellyet*, 41 ECAB 992 (1990).

<sup>5</sup> *See John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>6</sup> *Id.* for a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

<sup>7</sup> *Id.*

## ANALYSIS

Appellant alleged that on March 14, 2005 he was rear-ended while sitting in his employing establishment vehicle in the performance of duty. In its October 13, 2006 decision, the Office accepted that appellant was rear-ended while in the performance of duty on March 14, 2005. The Board finds that the evidence supports that the incident occurred as alleged.

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that being rear-ended on March 14, 2005 caused a personal injury on March 14, 2005. The medical evidence contains no reasoned explanation of how the specific employment incident on March 14, 2005 caused or aggravated his back condition.<sup>8</sup>

Appellant submitted several reports from Dr. Dryer. In a December 12, 2005 report, Dr. Dryer noted that appellant had chronic low back pain, which had worsened in the past three months. He opined that appellant's work as a special agent required sitting in his car for six to eight hours per day and had worsened his situation. Dr. Dryer diagnosed low back pain from a central protrusion at L5-S1 as well as degenerative disc disease. He did not address the March 14, 2005 incident. The Board notes that Dr. Dryer did not explain how the March 14, 2005 employment incident caused or aggravated appellant's condition. This is particularly important in light of the fact that the record reflects that appellant has degenerative disc disease. Furthermore, Dr. Dryer did not render his opinion until almost nine months after the March 14, 2005 incident. Rationalized medical opinion evidence is medical evidence, which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup> Thus, this report is of limited probative value.

In a May 18, 2006 report, Dr. Dryer noted that appellant had a history of chronic low back pain since September 2005. He also checked the box "yes" in response to whether appellant had a history of concurrent or preexisting degenerative disc disease and herniated disc. Dr. Dryer diagnosed degenerative disc disease and a herniated disc and opined that appellant was partially disabled from December 12, 2005 to February 1, 2006. Again, he did not provide any opinion as to whether appellant's back condition was caused or contributed to by the March 14, 2005 employment incident. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>10</sup>

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<sup>8</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>9</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>10</sup> *Michael Smith*, 50 ECAB 313 (1999).

The Office also received diagnostic studies dated November 5, 2005 and a December 8, 2005 MRI scan. However, these reports merely reported findings and did not contain an opinion regarding the cause of the reported condition. Other medical reports submitted by appellant do not address causal relationship.

Because the medical reports submitted by appellant do not address how the March 14, 2005 employment incident caused or aggravated a low back condition, they are insufficient to establish that the March 14, 2005 employment incident caused or aggravated a specific injury.<sup>11</sup>

**CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on March 14, 2005.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 14, 2007 is affirmed.

Issued: December 19, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> The Board notes that, if appellant regards the cumulative effect of his history of alleged employment-related incidents as causing a diagnosed condition and disability, he may wish to contact the Office regarding the filing of a claim for an occupational disease (Form CA-2).